

From: [Allen, Mark](#)
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Subject: FW: Comanche Nation v DOI (Chickasaw)
Date: Tuesday, September 15, 2020 11:01:41 AM

From: Gee, Randy <Gee.Randy@epa.gov>
Sent: Friday, July 31, 2020 9:41 AM
To: Alvarado, Tina <Alvarado.Tina@epa.gov>
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Subject: RE: Comanche Nation v DOI (Chickasaw)

Thanks Tina for the update.

Interesting that Comanche Nation stated they weren't aware of the EA for the casino.

Randy

From: Alvarado, Tina <[Alvarado.Tina@epa.gov](#)>
Sent: Friday, July 31, 2020 9:28 AM
To: Gee, Randy <[Gee.Randy@epa.gov](#)>
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FYI



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Citing McGirt, Judge Upholds Okla. Tribe's Gaming Permit

By **Adrian Cruz**

Law360 (July 30, 2020, 11:14 PM EDT) -- An Oklahoma federal judge said Thursday that

the [U.S. Department of the Interior](#) didn't violate federal law when it acquired land for a [Chickasaw Nation](#) casino, dismissing the [Comanche Nation](#)'s bid to void the tribe's gaming permit at the site.

Judge Joe Heaton dismissed the Comanche tribe's claims accusing the DOI of violating the Indian Gaming Regulatory Act, which bars gambling on lands taken into trust after 1988. Citing the [U.S. Supreme Court](#)'s recent decision in *McGirt v. Oklahoma*, which found that the reservation of the eastern Oklahoma Creek tribe still exists for federal criminal jurisdiction under the Major Crimes Act, the judge said the acquisition was legal because the land in question was at one point part of the Chickasaw reservation.

While he acknowledged that the decision in *McGirt* didn't necessarily apply to deciding whether the land was in fact still a reservation, Judge Heaton said the decision did scuttle the Comanche's claim saying the land — located near Terral, Oklahoma — was considered part of a dependent Indian community, non-reservation land set aside for tribes by the government.

"The court's decision in *McGirt* — that the Creek reservation had not been disestablished — was no doubt a surprise to Felix Cohen and virtually everyone else, but the surprise did not extend to deciding that the lands in question were anything other than 'reservations,'" Judge Heaton said in his order.

Claims challenging a second casino in the town of Marlow were also dismissed as Judge Heaton said the Comanche failed to properly explain what its issue was with that casino and what laws the casino violates. Simply operating the casino wasn't enough to justify their allegations, he said.

"Conducting gaming at that facility, without more, isn't enough. In short, whether viewed as a matter going to jurisdiction or simply as a matter of stating a substantive claim, the claims directed to the Marlow site must be dismissed," Judge Heaton said.

The claims alleging that a pair of sewage lagoons on the Terral property violated the National Historic Preservation Act and the National Environmental Policy Act stood because Judge Heaton said that the Comanche could still have valid claims. The tribe argued that it wasn't notified about an environmental assessment being made on the site, mentioning that the current location of the lagoons could potentially impact nearby burial sites.

Richard Grellner who represents the Comanche, told Law360 in a statement that following the Supreme Court's *McGirt* decision, the partial dismissal was expected but that he feels optimistic on the remaining environmental claims and that going forward, those claims will be their focus.

"Over the past three decades, DOI took over five dozen casinos into trust for three tribes (who control 2/3rd's of the state's \$5 billion casino market) with absolutely no environmental review while they were clearly intended for casino purposes," Grellner said. "We believe such a fundamental departure from the requirements of the law should render such acquisitions 'void ab initio.'"

The DOI argued that because the casino is already built and operating, the environmental policy and historic preservation law claims were moot, an opinion that Judge Heaton agreed with outside of the claims concerning the sewage lagoons.

The Comanche Nation initially filed suit in August 2017, seeking to halt construction on what was then a planned Chickasaw casino near Terral. The casino, known as the Riverstar, first opened in March 2018 and is located about 45 miles from a casino operated by the Comanche, according to court filings.

The Comanche additionally said that the Chickasaw and others of the Five Civilized Tribes — which also include the Seminole, Cherokee, Choctaw and Creek — have been able to corner the lion's share of Indian gaming in Oklahoma through what the Comanche said was a longstanding failure of DOI officials to adhere to federal law relating to trust acquisitions for Indian gaming.

Representatives for the federal government didn't immediately respond to a request for comment Thursday.

The Comanche Nation is represented by Richard J. Grellner of RJG Law PLLC and John P. Racin of the Law Office of John P. Racin.

The federal government is represented by Kay Sewell and Amanda R. Johnson of the [U.S. Attorney's Office](#) for the Western District of Oklahoma, Devon Lehman McCune of the [U.S. Department of Justice's](#) Environmental and Natural Resources Division and Brittany Berger of the U.S. Department of the Interior's Office of the Solicitor.

The case is Comanche Nation of Oklahoma v. Zinke et al., case number [5:17-cv-00887](#), in the [U.S. District Court for the Western District of Oklahoma](#).

--Editing by Michael Watanabe.